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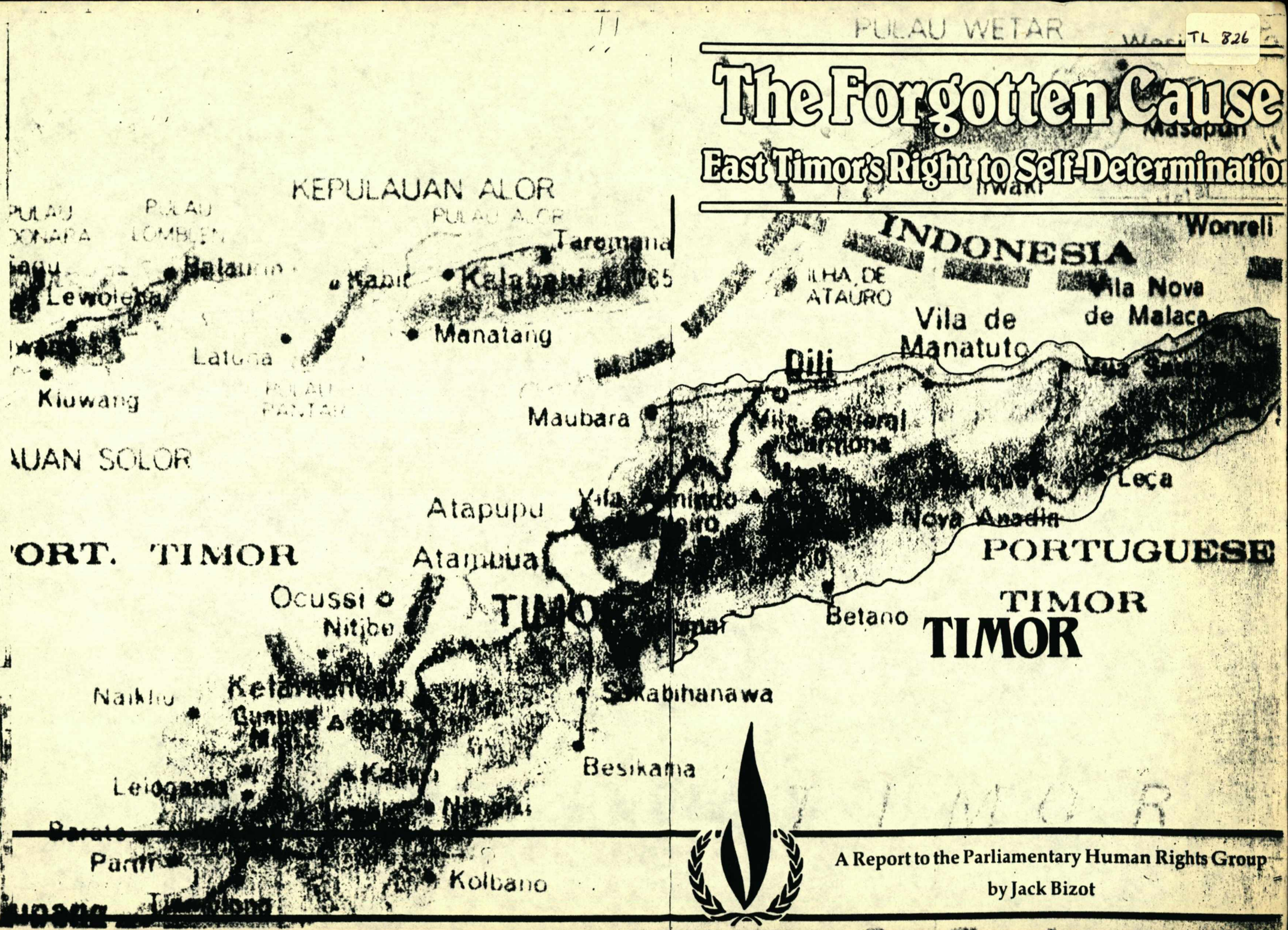
The Forgotten Cause

East Timor's Right to Self-Determination



A Report to the Parliamentary Human Rights Group

by Jack Bizot

The Forgotten Cause of East Timor's Rights to Self Determination

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THE PARLIAMENTARY HUMAN RIGHTS GROUP

The Parliamentary Human Rights Group was founded in 1976 as an independent forum in the British Parliament concerned with the defence of international human rights. Since 1976 its members have increased to a current level of 130 Parliamentarians from both the House of Commons and the House of Lords. With the increase in numbers has come an increase in the range and extent of its activities. Members of the Group represent all political parties, making the group broadly representative.

The officers are:

Chairman	Lord Avebury (Liberal)
Vice Chairman	The Rt Hon Sir Bernard Braine DL MP (Conservative)
Vice Chairman	Tony Lloyd, Esq., M.P. (Labour)
Treasurer	John Wheeler Esq MP (Conservative)

The Group's main objectives are:

- to increase awareness in Parliament and in Britain and abroad generally of human rights abuses wherever they occur
- to communicate to governments, their representatives in the United Kingdom and visiting delegations, the Group's concern about violations of human rights
- to work for the implementation by all governments of the Universal Declaration of Human Rights adopted by the United Nations, and of the United Nations covenants on civil and political, and economic, social and cultural rights

The Parliamentary Human Rights Group are extremely grateful to Mr Jack Bizot for the considerable effort he has put into the research and documentation of this report. The Group is also indebted to Jose Paulo Oliveira and Mr Gilberto Ferraz, a journalist based in London, for their invaluable help in producing a Portuguese version. Finally, the Group would like to thank the Silbury Fund for their generous donation towards the cost of printing and distribution.

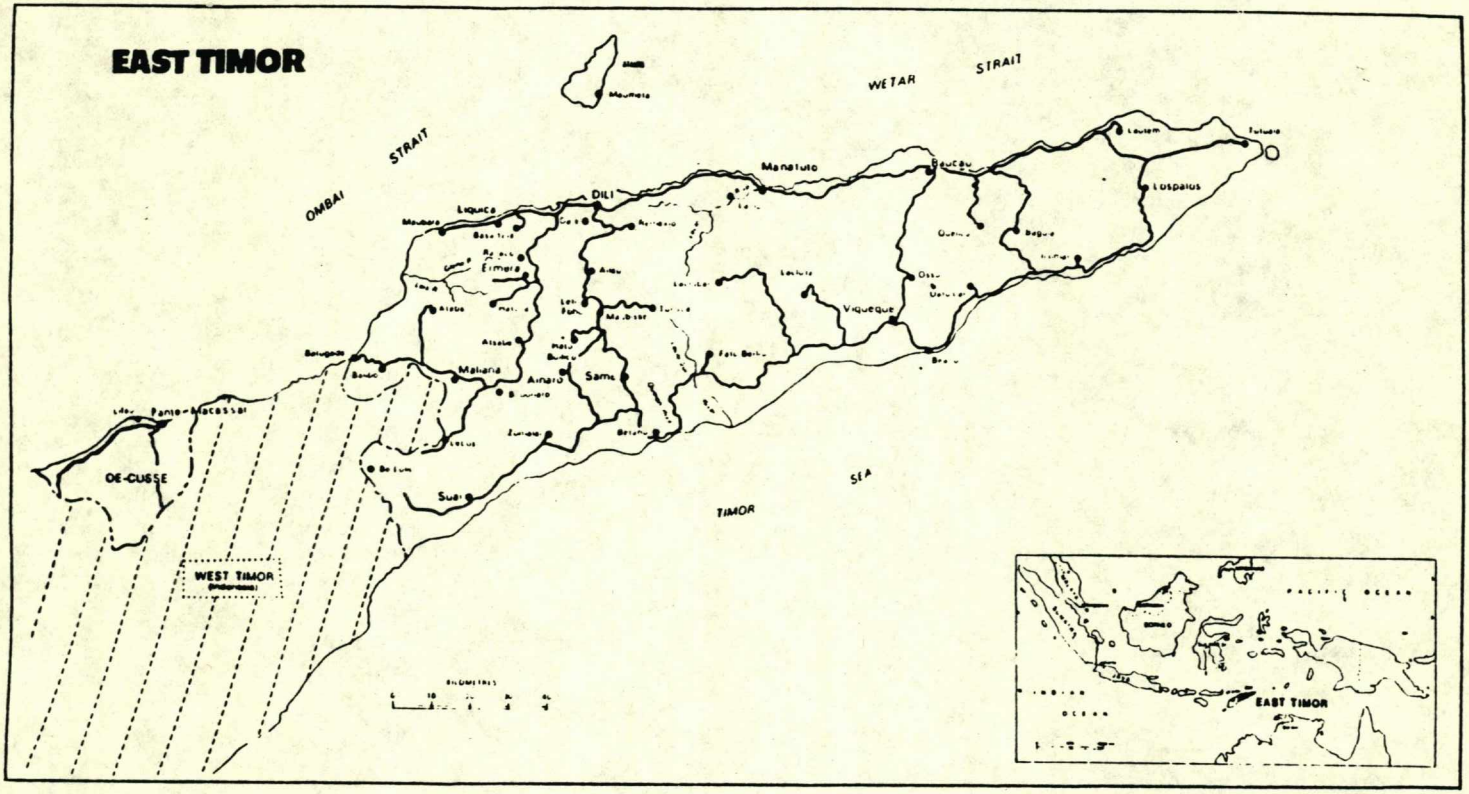
The Parliamentary Human Rights Group House of Commons London SW1

INTRODUCTION

On December 7 1975, mighty Indonesia launched a blitzkrieg against her tiny neighbour Ta · Timor, then struggling towards independence after the disintegration of Portuguese colonialism. Chapter IV of the United Nations Charter, which prohibits the use of force to settle disputes, was flagrantly contravened. The Indonesian aggressors then established a puppet Assembly and had it pass a bogus resolution seeking integration with Indonesia, thus aborting the process of decolonisation provided for by various instruments of the UN General Assembly and violating the International Covenant on Civil and Political Rights. Those acts by the Indonesian regime are no less illegal today than they were in 1975, nor has the duty of member states of the United Nations to uphold the Charter and the Covenant been extinguished.

In the eleven years that have passed since the annexation of East Timor, support for the principle of self-determination at the General Assembly has weakened, and attention has been diverted to the other human rights of the people of East Timor, and to questions of development. There has been some inclination to accept the fact of Indonesia's occupation, and to assuage consciences by insisting that recolonisation should be enlightened and benevolent. Some observers have been prepared to accept, on behalf of the voiceless people of East Timor, the brass coinage of economic development in exchange for the gold of true freedom.

Not only is this attitude inconsistent with the rules carefully developed by the United Nations for the evolution of subject peoples into independent nations, and in particular with Resolution 1514 of 1960, but also, it also sets more than one dangerous precedent. If the international community condones the use of force by any nation to expand its territory, other potential aggressors will know they are unlikely to be punished or even inconvenienced for their crimes. And if the principles of self-determination are set aside in the interests of the big and strong, against the wishes of the small and weak, the notion of a body of international law regulating the affairs of all nations without distinction, as domestic law regulates the affairs of individuals, is fatally weakened. This is why the fate of a small people in a remote area should be of vital interest to the outside world. This is why the cause of East Timor must be taken up now with new determination.


EAST TIMOR
WETAR STRAIT
OMBAI STRAIT
DILI
Manatuto
Baucau
Lospalos
Viqueque
Ainaro
Same
Suai
OE-CUSSE
WEST TIMOR
TIMOR SEA
EAST TIMOR

I. The right of self-determination in international law

The elusive body of law known as international law is continuously changing. Much of the recent change has been brought about through the United Nations. In particular, the emergence of self-determination as a principle of international law, and the subsequent development of this principle into an international legal right, has come about almost exclusively through the work of the United Nations.

Article 1 of the United Nations Charter states, in Paragraph 2, that one of "The purposes of the United Nations" is

> To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.....

This 'principle of self-determination' is reasserted in Article 55 of the Charter. Article 73, dealing with "non-self-governing territories", is also important, though it does not explicitly refer to self-determination. Article 73 requires, *inter alia*, that the administering Powers for non-self-governing territories recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation...to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions.

Upon this noble but abstract foundation, subsequent United Nations practice has built a fundamental international legal right. The single most important step in the development of this right was the General Assembly's "Declaration on the granting of independence to colonial countries and peoples", contained in the Resolution 1514 (XV) of 1960. This landmark resolution calls for a "speedy and unconditional end" to "colonialism in all its forms", and declares that "all peoples have the right to self-determination". While Resolution 1514 is not legally binding, it is a legally authoritative interpretation of one of the principles of the United Nations Charter. Furthermore, the resolution's authority is enhanced by the fact that it was adopted without opposition, with only nine Member States abstaining.

A decade after Resolution 1514, the General Assembly resoundingly reaffirmed the right to self-determination in Resolution 2625 (XXV), the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". This resolution proclaims that

> all peoples have the right freely to determine, without external interference, their political status...and every State has the duty to respect this right in accordance with the provisions of the Charter.

Resolution 2625, a broad-ranging declaration which was adopted by consensus by the General Assembly, declares a number of legal principles (including self-determination) that the Member States intended to be their agreed interpretation of the Charter.

Shortly after the adoption of this resolution, the International Court of Justice (the principal judicial organ of the United Nations) reinforced the right of self-determination in a pair of Advisory Opinions. First in the *Namibia* case (ICJ Reports, 1971, p.16, at p.31), and then again in the *Western Sahara* decision (ICJ Reports, 1975, p.12, at pp.31-35), the court declared that the "principle" of self-determination set out in the Charter had, through the subsequent development of international law, become a norm of international law that provides a "right" of self-determination to peoples in non-self-governing territories.

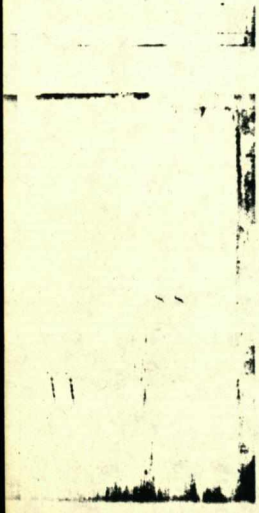
Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were adopted by the General Assembly in 1966, and came into force in 1976. The first sentences of both these covenants declare that "all peoples have the right of self-determination". As an indication of the ongoing vitality of the right of self-determination, the African Charter, which has just come into force within the past year, proclaims in Article 20 that "all peoples....shall have the unquestionable and inalienable right to self-determination".

II. East Timor's legal entitlement to the right of self-determination

Prior to 1975 East Timor's right of self-determination was uncontested. Resolution 1542 (XV), adopted by the General Assembly in 1960 the day after it passed Resolution 1514, recognised Portuguese (East) Timor (along with a number of other Portuguese colonies) as a non-self-governing territory under U.N. Charter Article 73, and that, as such, it possessed the right of self-determination. Beginning with Resolution 1807 (XVII) in 1962, the General Assembly adopted annual resolutions reaffirming this right for the Portuguese colonies. In 1963 the Security Council adopted Resolution 180, which asserted the same right.

Portugal initially refused to cooperate with the United Nations in seeking self-determination for the Portuguese colonies. But shortly after the overthrow of the Caetano regime in April of 1974, the new government adopted a constitutional law recognising the colonies' right of self-determination. Ever since that time, Portugal has repeatedly and consistently recognised East Timor's right of self-determination.

For a time, Indonesia also professed to recognise this right. On at least two occasions in June of 1974, the Indonesian Foreign Minister, Adam Malik, accepted East Timor's right to self-determination (and to independence); he is also quoted by the Indonesian press as saying that Indonesia would not interfere with the process of self-determination in East Timor.[1] Then in October of that year, the same line was taken by Indonesia in the UN General Assembly.[2] As late as November of 1975, when the Portuguese and Indonesian Foreign Ministers met in Rome, they agreed that Portugal was the authority responsible for overseeing the exercise of East Timor's right of self-determination.[3] Even after the invasion in December 1975, this right was still officially recognised by Indonesia, though its actions indicated otherwise. But by 17 July 1976, the charade was over. Indonesia declared that East Timor had exercised its right of self-determination by integrating with Indonesia.



III. East Timor has not yet exercised its right of self-determination

The United Nations has never recognised the validity of Indonesia's claim that East Timor has been integrated into Indonesia. Neither has Portugal, and nor have the majority of the countries of the world (though some, like Australia, have done as the Indonesians requested, and recognised the *fait accompli* in East Timor). Meanwhile, the people of East Timor themselves continue to struggle against the Indonesian occupation, demonstrating, though only at a staggering cost in lives, that the fact of integration with Indonesia has not yet been accomplished or accepted. At this point, a very brief sketch is needed of the events in East Timor of 1975 and 1976.

Following the overthrow of the Caetano regime in 1974, when it became apparent that Portugal intended to give East Timor its chance tobecome independent, three main political parties emerged in East Timor. These were FRETILIN, which called for independence for East Timor; UDT, which sought an ongoing relationship with Portugal, gradually leading to independence; and APODETI, the smallest of the three parties, which favored integration with Indonesia. In August 1975, the UDT attempted to seize power in East Timor, provoking a civil war in which the UDT and FRETILIN struggled for power. Shortly after this, the Portuguese governor withdrew from East Timor. Within a month, it was clear that FRETILIN was in control of the territory. On November 28th, FRETILIN declared independence for East Timor. Two days later, the remnants of the UDT and APODETI, along with two other, virtually non-existent parties, declared East Timor's integration into Indonesia. On December 7th, Indonesia invaded East Timor, forcing FRETILIN to abandon the capital, Dili. The conflict against the vastly superior strength of Indonesia soon came to take the form of a guerilla war, which continues to this day. Following the invasion, Indonesia took steps to bring into existence a so-called "Regional Popular Assembly" of East Timor which petitioned for integration with Indonesia on 31st May 1976. Indonesia responded by passing a law on 17th July 1976 that recognised East Timor as the 27th province of Indonesia.

On 1 December 1976, the General Assembly adopted Resolution 31/53, in which it rejected the claim that East Timor has been integrated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence.

The following year, Resolution 32/34 contained an identical provision. Resolutions 34/41, 35/27, and 36/50, adopted in 1979, 1980, and 1981, respectively, declare that "the people of East Timor must be enabled freely to determine their own future". All of the above five resolutions, as well as Resolution 33/39 from 1978, reaffirm "the inalienable right of the people of East Timor to self-determination and independence". Resolution 37/30, dated November 23rd 1982, is the most recent resolution on East Timor. It takes note of the previous resolutions, and recognises that "Portugal, the administering Power, has stated its...commitment to uphold" East Timor's right of self-determination. As recently as 25 July 1986, the "Working paper prepared by the Secretariat" on East Timor (A/AC.109/871)recognises Portugal's obligation toward East Timor under UN Charter Article 73e; this obligationwould not exist if, as Indonesia claims, East Timor had already exercised its right of self-determination.

For its part, Portugal rejected both FRETILIN's declaration of independence on November 28th 1975, and the "four-party"declaration of integration with Indonesia two days later, and informed the U.N. Secretary-General of this in a letter dated November 30th 1975 (Doc S/11890). After Indonesia's invasion of East Timor on December 7th, Portugal informed the Security Council that it had severed diplomatic relations with Indonesia (Doc S/11899). Portugal rejected and continues to reject Indonesia's claim that East Timor had been integrated into Indonesia. Thus, in a speech to the General Assembly on October 23rd 1985, Portugal's President Eanes stated that Portugal "does not reject and will never reject" its constitutional, historical, and international responsibilities with regard to East Timor's self-determination.

It is evident that the United Nations and Portugal have acted within the terms of the UN Charter by rejecting East Timor's integration with Indonesia. Resolution 1514 declares that the right of self-determination intends that peoples shall "freely determine their political status" according to "their freely expressed will". More specifically, Principle IX of Resolution 1541 sets out the circumstances under which an act of integration may serve as a valid act of self-determination:

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems necessary, supervise these processes.

Under this test, Indonesia's claim that the integration of East Timor into Indonesia was an act of self-determination is totally without foundation. Not one of the requirements of Principle IX was met.

The central event used by Indonesia to support its claim to have integrated East Timor is a petition passed by the "Regional Popular Assembly" on May 31st 1976 (see above), seeking integration into Indonesia. This Assembly met only once, on May 31st. At that meeting it took a decision to seek integration in less that two hours;[4] integration was the only item discussed.[5] This body was not an expression of *self-government* advanced or otherwise. The members of the assembly had been chosen by supposedly traditional East Timorese means of 'consensus and consent', except in the capital city Dili (which is where the Indonesian invasion was most heavily focussed), where it was claimed that elections were held under the principle of 'one man, one vote'.[6] There is no evidence that elections of any kind were held in Dili, and even if they had been, a process of voting under military occupation, with the main leaders of the people engaged in armed resistance to the aggressors, and no freedom of expression or assembly, would have satisfied neither the letter nor the spirit of the Principles referred to above. There was no "universal adult suffrage" or "informed and democratic processes", nor were there "free political institutions" where wishes could be "freely expressed" or elections "impartially conducted", since tens of thousands of Indonesian troops were in control in and around Dili, where the "assembly" met. There was no UN supervision either of alleged elections

or of the meeting of the "Regional Popular Assembly". All of the invitations made by Indonesia to the various bodies of the UN were declined[7] on the wholly proper ground that the UN refused to acknowledge in any way Indonesia's unlawful act of integration. Only seven nations (India, Iran, Malaysia, New Zealand, Nigeria, Saudi Arabia, and Thailand) sent diplomatic observers for the May 31st meeting and, as the proceedings were conducted in Portuguese, these observers were not in a position to assess them.[8]

IV. The illegality of Indonesia's actions in East Timor

In the course of discussions before the General Assembly from 1954 to 1962 regarding the West Irian dispute, Indonesia repeatedly emphasised that its national boundaries were those of the former Netherlands East Indies. Moreover, on several occasions it specifically denied having any claim or even an ambition toward East Timor.[9] As late as June and September of 1975, Indonesia explicitly declared that it had no territorial ambitions toward East Timor.[10]

Nevertheless, starting in 1974, Indonesia acted in contravention of these declarations. Beginning in 1974 and increasingly during 1975, Indonesia carried out a subversive propaganda campaign that sought to destabilise the situation in East Timor, and in particular to weaken the position of FRETILIN.[11] This campaign, which included the beaming of radio programmes from West Timor into East Timor, was characterised by distortions and downright fabrications. At the same time, Indonesia supported the East Timorese political parties of its choice. At first this was APODETI, but later, when APODETI was found to have only minimal support in East Timor, Indonesia turned its attention to members of the UDT who might not oppose integration with Indonesia. Finally, after the UDT-FRETILIN civil war had subsided, with FRETILIN in control, Indonesia began to take more direct action. In October and November of 1975 there were a number of clashes on the border between West and East Timor, between FRETILIN and Indonesian (and Indonesian-supported) forces.[12] Thus, even prior to the full-scale invasion on December 7th, Indonesia was already interfering in the affairs of East Timor (and of Portugal).

The December 7th invasion was immediately condemned by the United Nations. On December 12th 1975, the General Assembly adopted Resolution 3485, in which it called upon Indonesia to desist from further violation of the territorial integrity of Portuguese Timor and to withdraw without delay its armed forces from the Territory in order to enable the people of the Territory freely to exercise their right of self-determination and independence.

Ten days later, the Security Council adopted Resolution 384, which also called upon Indonesia to withdraw from East Timor. Unlike General Assembly Resolutions addressed to particular member states, a Security Council resolution is binding, under Article 25 of the UN Charter, upon the Member States of the United Nations. On April 22nd 1976, the Security Council reiterated its demand in Resolution 389, but Indonesia ignored this and continues to this day to defy it. In December 1976 the General Assembly, in Resolution 31/53, "strongly deplored" Indonesia's "persistent refusal...to comply with" General Assembly Resolution 3485 and Security Council Resolutions 384 and 389. Two years later, in Resolution 33/39, the General Assembly repeated this concern.

Indonesia's invasion and occupation of East Timor is an act of aggression that defies a number of codifications of international law by the United Nations, beginning with Article 2(4) of the Charter, which states:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Resolution 2625 (see Section 1., above) contains a number of relevant provisions. With regard to principle (a) it states that

> The territory of a State shall not be the object of military occupation...No territorial acquisition resulting from the ... use of force shall be recognised as legal.

Under its discussion of principle (c) it declares that no state "has the right to intervene, directly or indirectly, for any reason whatever, in the...affairs of any other State. Finally, Resolution 2625 proclaims, regarding principle (e), that "every state has the duty to refrain from any forcible action which deprives peoples...of their right of self-determination.

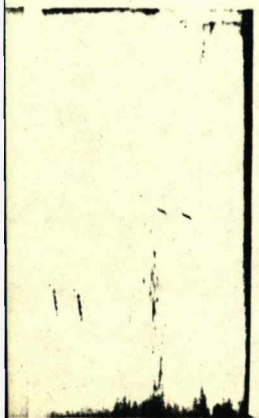
General Assembly Resolution 3314, which was adopted by consensus, is intended to be an authoritative "Definition of Aggression", in accordance with the UN Charter. Among the acts it lists as "acts of aggression", the first is invasion or attack by the armed forces of a State of the territory of another State, or any military occupation...resulting from such invasion or attack, or any annexation by the use of force of the territory of another State.

Resolution 1514, so important to the right of self-determination, recognised the threat that the use of force posed to this right, and thus it deplores interference "in the internal affairs" of another State and the "disruption of a State's national unity and territorial integrity". It is arguable that, under some of the provisions set out above, Indonesia had already violated international law by its interference in East Timor's internal affairs prior to December of 1975; it is undeniable that its actions on and after December 7th 1975 violated all of the above provisions.

In the eleven years since the invasion, Indonesia has at various times put forth a number of justifications for its actions in East Timor. None of these stands up to scrutiny. Indonesia has said that its invasion of East Timor was necessary because East Timor was not economically viable. Resolution 1514 states that inadequacy of "economic...preparedness should never serve as a pretext for delaying independence" in the decolonisation context; far less, then, should it be allowed to serve as a basis for the complete denial of independence. Indonesia's claim that it has historical and ethnic ties with East Timor is very weak, and it conflicts with its own disavowals in the 1950s and 1960s of having any valid claim to the territory. The claim that Indonesia was invited into East Timor by the pro-integration parties there fails because such a claim could only serve as a justification if it came from the recognised government of East Timor, whereas the parties did not constitute the recognised government. Indonesia's other claims that the invasion of East Timor was necessary for the defense of Indonesia and the security of that region of the globe are absurd but, even if taken seriously, do not excuse Indonesia's actions, since Indonesia's response was grossly disproportionate to any threat with which East Timor may have presented Indonesia.

Recognising, apparently, the inadequacy of its justifications for its invasion of East Timor, Indonesia sometimes adopts another approach, which is to say that it has "never wanted to annex East Timor".[13] This makes the occupation of East Timor sound like something Indonesia did unwillingly. When all other lines of reasoning fail, Indonesia resorts to complaining about interference with matters in its domestic jurisdiction, contrary to Article 2(7) of the UN Charter, and professes to be annoyed by this continuing fuss about East Timor's right of self-determination. This argument fails on its merits,[14] and also because it is untrue; East Timor is not legally a matter within the domestic jurisdiction of Indonesia.

As much as a third of the population of East Timor - more than 200,000 people - may have died as a result of the occupation, but the severe restrictions placed by Indonesia on access to East Timor render it impossible to make a precise estimate or to verify the numerous reports of crimes under the international humanitarian conventions on the laws of war and genocide, against soldiers and civilians alike. However, it is beyond the scope of this paper to catalogue the atrocities committed by Indonesia during its eleven-year occupation of East Timor. The purpose here is to argue that Indonesia's invasion, occupation and annexation of East Timor not only violates international law per se, as an illegal act of aggression, but it also violates international law because it has prevented Portugal from fulfilling its obligation as the administering Power for East Timor, and (thus) it has prevented East Timor from exercising its right of self-determination.



V. The passage of time cannot change the legal situation in East Timor

In legal terms, nothing has changed in East Timor for over a decade. The mere passage of time can neither validate Indonesia's annexation of East timor, nor can it weaken East Timor's inalienable right of self-determination. But the passage of time does allow Indonesia to consolidate its position in East Timor. For one thing, Indonesia has undertaken a programe of transmigration, whereby Indonesians from other areas are moved to East Timor. If this is allowed to continue long enough, it may make a meaningful exercise of East Timor's right of self-determination difficult, if not impossible, to carry out.

Indonesia points to East Timor's participation in the 1982 Indonesian elections as evidence that the people of East Timor have accepted the Indonesian presence in their country. There were supposedly three parties (none native to East Timor) involved in these elections, but Golkar, the predominant party,supported by the government of Indonesia, apparently received 99.4% of the votes.[15] This raises a strong suspicion that the elections were not free; this suspicion is confirmed by a photograph published in an official Indonesian publication showing[16] that, at the voting sites, each voter's choice was known to all who watched. Moreover, it is curious that, though East Timor had already been officially 'integrated' into Indonesia in 1976, East Timor did not participate in Indonesia's 1977 elections. As for the upcoming elections of 1987, they are no more likely to be free than the 1982 elections were. The United Nations should not under any circumstances lend credibility to these elections by agreeing to observe them. Finally, with regard to the elections, the obvious needs to be said, namely that, having illegally invaded and annexed East Timor, Indonesia cannot subsequently validate its illegal acquisition, merely by conducting elections. In this sense, whether the elections are free or not is entirely irrelevant.

Another inevitable result of the passage of time is that, as FRETILIN and its supporters among the population continue their resistance to the Indonesian occupation, so will members of FRETILIN, as well as East Timorese civilians, continue to be killed, until the Indonesian troops are finally removed from East Timor. For almost as long as Indonesia has been in East Timor, the Indonesians have been claiming that FRETILIN has ceased to exist,[17] and for just as long FRETILIN has been proving them wrong.[18] In this as in other things, though, time favors the greatly superior strength and resources of Indonesia.

Indonesia is well aware that time is on its side, and for this reason is quite happy to let the United Nations continue to postpone its discussion of East Timor, because this will be in Indonesia's advantage because the continual postponement makes people forget about East Timor and they become more and more reluctant to start discussing the question all over again.[19]In the past decade in the United Nations, support for East Timor's right of self-determination and condemnation of Indonesia's occupation of East Timor have gradually dwindled, though neither has yet failed. Why has this change taken place, if the legal situation in East Timor remains unchanged?

Indonesia claims that the reason for the increase in the number of states supporting the position of Indonesia is simply a better knowledge of the real situation in East Timor.[20]Indonesia urges other states to join those that have already done so, and recognise the "geo-political and socio-economic realities

pertinent to the East Timor issue".[21] Thus Indonesia would have the countries of the world abandon East Timor's right of self-determination to political expediency. This should never be allowed to happen.

VI. East Timor and the rest of the world

General Assembly Resolution 3485 of December 12th 1975 calls upon "all states to respect the inalienable right of the people of Portuguese Timor to self-determination" and "to respect the unity and territorial integrity of Portuguese Timor". Security Council resolutions 384 and 389 (of December 22nd 1975 and April 22nd 1976, respectively) echo the General Assembly resolution, and also call upon all States and other parties concerned to co-operate fully with the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonisation of the Territory. As noted in section IV., above, General Assembly Resolution 2625, in its discussion of principle (a), declares that "(n)o territorial acquisition resulting from the...use of force shall be recognised as legal". With regard to principle (c) of Resolution 2625, it is further stated:

> Every State has the duty to promote, through joint and separate action, realisation of the principle of...self-determination of peoples...and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights both require, in their first article, that "States Parties" to these covenants "shall promote the realisation of the right of self-determination".

Despite these declarations of international law, the vast majority of the most influential nations of the world have failed to take any action to uphold East Timor's right of self-determination. Only a small and unidentified group of states have spoken out against Indonesia's illegal actions. Moreover, many states have positively (though quietly) supported Indonesia. The United States and Australia knew in advance of Indonesia's plans to invade East Timor, but made no efforts to discourage these plans.[22] Though the full extent of their knowledge is less clear, the United Kingdom and Japan also seem to have acquiesced at a very early stage to Indonesia's operations in East Timor.[23] A number of states, including the United States, the United Kingdom, the Netherlands, France, West Germany, Yugoslavia, South Korea, and Australia, have sold military hardware to Indonesia,[24] much of which Indonesia has used in its aggression against East Timor. Australia, since it recognised the legality of Indonesia's presence in East Timor in 1979, has conducted negotiations with Indonesia over the exploitation of offshore oil in the Timor Gap, between Australia and Timor.[25] Even the United Nations itself is not above criticism: loans from the World Bank have been used to fund Indonesian projects in East Timor, and may even have been used by Indonesia to purchase military hardware.[26]

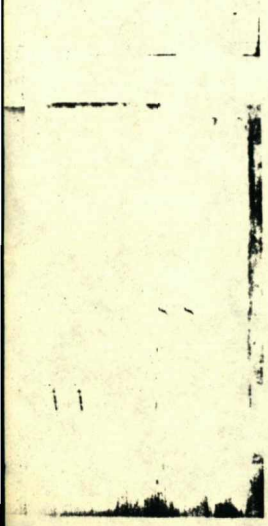
There are many reasons for the decline in international support for East Timor, but one cynical assumption underlies all of them. Most states weigh up the advantages of supporting either East Timor or Indonesia in the United Nations, and decide to back Indonesia. In some cases this is because of a valued trading link with Indonesia, certainly an important factor for Japan and the western industrialised states. Then there is the surprising support for Indonesia's aggression among supposedly radical Arab states, which seem to respond better to calls for solidarity with a fellow Muslim nation than they do to the need to uphold a small nation's right of self-determination. India too, a revered member of the non-aligned

movement, has supported Indonesia in the United Nations, apparently because it sees parallels between the invasion of East Timor and its own takeover of the Portuguese colony of Goa, although the circumstances of these two cases were very different. Indonesia has been able to exploit this self-interest among most of the world's states, offering valuable prospects for trade to some small and impoverished states, and even resorting to outright bribery of delegates to the United Nations. Fretilin's UN representative, Jose Ramos Horta, has seen several desperately needed votes for East Timor's self-determination lost in this way. Finally, there is the matter of Indonesia's status as a "Non-Aligned" nation. Indonesia claims that "as a nation with a cherished tradition of anti-colonialism and anti-imperialism, as an initiator of the Bandung Conference and a founding member of the Non-Aligned Movement", it does not "require any lessons...as to what the true essence of decolonisation and self-determination is".[27] It is true that Indonesia once enjoyed a reputation for opposing colonialism and respecting self-determination, but the reputation is wholly invalidated by Indonesia's act of aggression against East Timor. Thus, the General Assembly's Resolutions 31/53, 33/39. 34/40, and 35/27 make note of the Non-Aligned Countries' reaffirmation of East Timor's right of self-determination, in the face of Indonesia's occupation of the territory. It is entirely in accord with the principles of the Non-Aligned Movement for it to continue to oppose Indonesia's claim to have integrated East Timor.

VII. The role of Portugal, as administering power for East Timor

As stated in sections II and III above, Portugal continues to recognise East Timor's right of self-determination, and refuses to acknowledge Indonesia's claim to have integrated East Timor. The United Nations, in turn, continues to recognise Portugal as the administering power for East Timor under Article 73 of the UN Charter, and has done so consistently since the Indonesian invasion of East Timor on December 7th 1975.[28] General Assembly Resolutions 35/27 and 36/50, dealing with the "Question of East Timor", both welcomed the "diplomatic initiative taken by the Government of Portugal" on September 12th 1980, in which Portugal recognised the responsibility that it has to help East Timor achieve its right of self-determination. Since 1982, Article 307 of the Portuguese Constitution has recognised Portugal's "responsibility, in accordance with international law, to promote and safeguard the right to independence" of East Timor.[29]

With regard to solving the problem of East Timor, Portugal and the United Nations need each other's help and they both need the active cooperation of the rest of the world. Portugal has a crucial and leading role to play, in keeping the issue of East Timor's right of self-determination alive and in the attention of the world community, and in pursuing the fulfillment of that right. Finally, it is important that Portugal, as the administering Power for East Timor, should strive to ensure that whenever East Timor is discussed in an international forum, the need to consult with the people of East Timor themselves is emphasised.



VIII. The role of the United Nations

Like Portugal, the United Nations continues to recognise its responsibility to oversee the valid xercising by East Timor of its right of self-determination.[30] One recent problem stems from the 1982 General Assembly Resolution 37/30 on East Timor, which calls on the U.N. Secretary-General to "initiate consultations with all parties directly concerned" with East Timor, "with a view ...to achieving a comprehensive settlement of the problem". To date the Secretary-General has met on a number of occasions with representatives of Portugal and of Indonesia, but representatives of the people of East Timor - certainly the party most 'directly concerned' - have not been included in these discussions. Just a year before Resolution 37/30, when it last discussed the "Question of East Timor", the General Assembly, in naming "all interested parties" in paragraph 3 of Resolution 36/50, mentioned Portugal, Indonesia, and "the representatives of the East Timorese people". In paragraph 16 of the "Working paper prepared by the Secretariat" of August 19th 1983 (A/AC 109/747), it is noted that the United Nations Human Rights Commission had also, on February 16th 1983, after the adoption of Resolution 37/30, recognised the representatives of the East Timorese people as "an interested party". On several occasions the Secretary General has been reminded by the Parliamentary Human Rights Group of his obligation to consult the people of East Timor, and in 1986 the chairman conveyed to him a message from the Commander of Falantil, the armed forces of FRETILIN, stating his willingness to meet the Secretary-General at any time and place he named. To this, the Chairman received no answer, and he raised the matter in a speech to the Decolonisation Committee in the autumn of 1986.

More generally, and much more importantly, the United Nations must take quick and decisive action for the complete and permanent removal of Indonesia from East Timor, if it wishes the right of self-determination to have any substance in international law. The individual nations of the world should refuse to have any dealings with Indonesia that might imply a recognition of the legitimacy of Indonesia's occupation of East Timor, and the United Nations and other collective international bodies should impose sanctions against Indonesia until the forces of occupation are removed. A multi-national peace-keeping force should be dispatched to East Timor, and should remain there until East Timor has been able to exercise a free and genuine act of self-determination.

Indonesia's expansionism must not be accepted by the world community. It must not be seen - as it will if Indonesia is allowed to keep East Timor - that a large nation may annex a small territory by military force, and the rest of the world will do nothing to stop it. The illegality of Indonesia's occupation of East Timor must be stated forcefully and repeatedly, so that it is made clear to Indonesia that its actions have not been accepted. Indonesia's defiance of the authority of the United Nations and of international law must not be allowed to stand, or many of the gains made by the United Nations in developing the right of self-determination will be lost forever.

FOOTNOTES

1. *Decolonisation*, No. 7, Aug. 1976, "Issue on East Timor", U.N. Dept. of Political Affairs, Trusteeship and Decolonisation, pp.12 and 46.
2. *Id.*at 47.
3. *Id.*at 22.
4. "Issue on East Timor", *supra*, at 37.
5. Roger S Clarke, "The "Decolonisation" of East Timor and the United Nations Norms on Self-Determination and Aggression," *The Yale Journal of World Public Order*, Vol. 7, No. 2 (1980), p.18
6. U.N. Doc. S/12106, Appendix (1976)
7. "Issue on East Timor", *supra*, at 64
8. U.N. Doc. A/31/23/Add. 6, "Working paper prepared by the Secretariat" (1976), at p.237.
9. "Issue on East Timor", *supra*, at 39-41.
10. *Id.* at 48-49.
11. *Id.* at 14-16; and Timor: *A People Betrayed*, by James Dunn (Queensland: Jacaranda Press, 1983), pp. 87-88, 120-21.
12. "Issue on East Timor", *supra*, at 26-27
13. Statement by Ambassador Irawan Darsa, Observer Delegation of the Republic of Indonesia to the 40th Session of the Commission on Human Rights, Geneva, 23 February 1984 (paragraph 6)..
14. See *The Development of International Law Through the Political Organs of the United Nations*, by Rossalyn Higgins (London: Oxford University Press, 1963), pp. 90-106.
15. U.N. Doc. A/AC. 10 9/715, "Working paper prepared by the Secretariat" (1982), paragraph 24.
16. *East Timor After Integration*, Indonesian Department of Information, Jakarta, July 1983, p.94.
17. See, eg., *id., paragraphs 19 and 30.*
18. See, eg., U.N. Doc. A/AC 109/747, "Working paper prepared by the Secretariat" (1983), paragraph 7.
19. *Kompas* (a Jakarta newspaper), 22 August 1986, in an article based on statements by the Indonesian ambassador to the United Nations.
20. Indonesian ambassador to the Commission on Human Rights, 23 February 1984, paragraph 7 (see f.n. 13, above).
21. *Id., paragraph 15.*
22. Dunn, *supra*, pp. 277, 281, 348.
23. *Id., at 343-44*
24. *Comment*, "East Timor" (London: Catholic Institute for International Relations, 1985), p.23.
25. Dunn, *supra, p.378;* East Timor: The Struggle Continues, *Torben Retboll, ed (Copenhagen: IWGIA, Doc. 50, 1984), p.149.*
26. U.N. Doc. A/36/448/Annex, "Session of the Permanent People's Tribunal on East Timor", Lisbon, 1981, p.28.
27. Indonesian ambassador to Commission on Human Rights, 23 February 1984, paragraph 14 (see f.n. 13, above).
28. See, eg., paragraph 2 of G.A. Resolution 3485 of 12 December 1975, and paragraph 3 of S.C. Resolution 384 of 22 December 1975.

29. Dunn, *supra*, pp. 370-71.
30. See, eg., the preamble to Resolution 1514, paragraph 2 of G.A. Resolution 34/40, and paragraph 2 of G.A. Resolution 35/27.